

JS - 6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

M. AILEEN MORNINGSTAR and ) Case No. CV 11-00655 DDP (VBKx)  
ALICE SLETTEDAHL, )  
Derivatively on Behalf of )  
Nominal Defendant RINO )  
INTERNATIONAL CORPORATION, ) **ORDER RE: TRANSFER TO DISTRICT OF**  
Plaintiffs, ) **NEVADA**  
v. )  
ZOU DEJUN, KENNETH C. )  
JOHNSON, QUAN XIE, BEN WANG, )  
LI YU, BRUCE RICHARDSON, YI )  
LIU, ZHANG WEIGUO and RINO )  
INTERNATIONAL CORPORATION, ) [Dkt. No. 90]  
Defendants. )  
\_\_\_\_\_  
)

Presently before the court is Nominal Defendant RINO International Corporation's Motion to Stay this shareholder derivative action.

This case is one of four shareholder derivative suits filed on behalf of RINO. This is the second such action filed in federal court. The first (the "Nevada Action") was filed in the District

1 of Nevada on December 20, 2010, approximately one month before this  
2 case was initiated.<sup>1</sup>

3 Defendants Zou Dejun and Qiu Jianping recently sold two  
4 California houses to help fund the settlement of a related  
5 shareholder class action in this court. (Declaration of Robin  
6 Winchester ¶ 36.) Plaintiffs in this case believe that the home  
7 sales yielded an excess of approximately \$2.4 million. (Id. ¶ 37.)  
8 Plaintiffs have sought discovery regarding these assets, and intend  
9 to seek to establish a constructive trust over the \$2.4 million.  
10 (Id. ¶ 49.)

11 In the meantime, the Nevada Action has proceeded, and may soon  
12 settle. The parties to the Nevada Action moved for preliminary  
13 settlement approval in November 2012. The parties here appear to  
14 agree that final approval of the proposed settlement in the Nevada  
15 Action will extinguish Plaintiffs' claims in this case.

16 The court in the Nevada Action has yet to rule on the pending  
17 motion for preliminary approval. Even if the court does  
18 preliminarily approve the settlement, Plaintiffs here intend to  
19 object to the settlement in the Nevada Action at the final approval  
20 stage.

21 The "first-to-file" rule "permits this court to decline  
22 jurisdiction when a complaint involving the same parties and issues  
23 has already been filed in another district." Apple Inc. v.  
24 Psystar, 658 F.3d 1150, 1161 (9th Cir. 2011) (quotation and  
25 citation omitted). In such cases, this court may, in its  
26 discretion, stay, transfer, or dismiss the later-filed suit.

---

27  
28 <sup>1</sup> The Nevada suit is In re RINO International Derivative  
Litigation, No. 10-cv-2209-MMD-GWF.

1 Cedars-Sinai Med. Center v. Shalala, 125 F.3d 765, 769 (9th Cir.  
 2 1997). The rule promotes judicial efficiency and reduces the risk  
 3 of inconsistent decisions. Alltrade, Inc. v. Uniweld Prods., Inc.,  
 4 946 F.2d 622, 625 (9th Cir. 1991); Meru Networks, Inc. v. Extricom  
 5 Ltd., No. C-10-2021 RMW, 2010 WL 346315 at \*3 (N.D. Cal. Aug. 31,  
 6 2010). Threshold factors include 1) the chronology of the actions,  
 7 2) the similarity of the parties, and 3) the similarity of the  
 8 issues. Alltrade, 946 F.2d at 625.

9       All three factors here weigh in favor of transfer to the  
 10 District of Nevada. The chronology and similarity of issues are  
 11 not in dispute. Though Plaintiffs argue that there is one  
 12 defendant in this case who is not named in the Nevada Action, the  
 13 parties in the two actions need only be substantially similar for  
 14 the first-to-file rule to apply. Nat'l Union Fire Ins. Co. of  
 15 Pittsburgh v. Payless Shoesource, Inc., No. C-11-1892 EMC, 2012 WL  
 16 3277222 at \*3 (N.D. Cal. Aug. 9, 2012).

17       Accordingly, Defendant's motion is, for all intents and  
 18 purposes, GRANTED. Rather than stay this case, however, the court  
 19 transfers this matter to the District of Nevada.<sup>2</sup>  
 20 IT IS SO ORDERED.

21  
 22 Dated: March 12, 2013

23  
 24  
 25  
 26  
 27  
 28

  
 DEAN D. PREGERSON  
 United States District Judge

---

<sup>2</sup> Whether this case should be consolidated, the role of Plaintiffs' present counsel, and whether to establish a constructive trust over any Defendant's assets are issues best left to the Nevada court.